

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AUSTIN FENNER and IKIMULISA  
LIVINGSTON,

Plaintiffs,

vs.

09 CV 9832 (LGS)

NEWS CORPORATION, NYP HOLDINGS,  
INC., d/b/a THE NEW YORK POST,  
and MICHELLE GOTTHELF and DANIEL  
GREENFIELD, in their official and individual  
capacities,

Defendants.  
-----X

**AFFIDAVIT OF DANIEL GREENFIELD**

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF NEW YORK                )

DANIEL GREENFIELD, being duly sworn, deposes and says:

1. I am the Deputy Editor and Morning Assignment Editor of the Metropolitan Desk ("Metro Desk") for Defendant NYP Holdings, Inc., d/b/a the New York Post (the "Post"). I have personal knowledge of the facts set forth herein, except where otherwise indicated. I submit this Affidavit in support of the Post's, Michelle Gotthelf's, and my motion for summary judgment. This Affidavit does not include all facts and circumstances known to me that relate to this matter. This Affidavit supplements deposition testimony that I gave on April 5, 2012 and concerns matters about which I did not testify at that time.

2. I have been employed as the Metro Desk's Morning Assignment Editor since October 2006, and added the responsibilities of Deputy Editor in or about December 2007. In

this capacity, I am responsible for, among other things, daily assigning reporters to stories, coordinating reporters in their assignments, preparing a list of potential stories for inclusion in a given day's newspaper, and reviewing ideas for potential stories (or "story pitches") received from reporters. In this capacity, I supervised, as least in part, plaintiff Austin Fenner ("Fenner").

3. As a reporter for the Post, Fenner chronically failed to pitch quality story ideas to his editors or to generate exclusive, enterprise or investigative stories, which were essential aspects of his job.

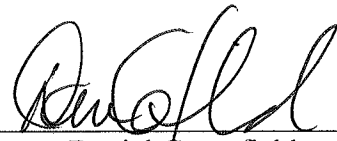
4. On September 17, 2009, Fenner received his second performance warning for, among other things, failing to "pitch story ideas that make it into the newspaper," and not producing "enterprise stories."

5. Thereafter, Fenner's performance did not improve and, as a result, his employment was terminated on November 9, 2009. From the date of his 2009 warning until his termination, Fenner produced no investigative or enterprise stories. He pitched only three stories, one of which ran as a "brief" and another which was rejected. Fenner contributed reporting to 15 published stories during this timeframe, but he was assigned to 14 of them.

6. Fenner's published pitch was a "brief" (a short story of minor interest found near the back of the newspaper) about a Brooklyn youth football team dedicating its season to its former coach, a slain police officer. The story ran on page 20 and was only 149 words in length. This was not an investigative or enterprise story.

7. Fenner also pitched a story during this time regarding a man living in a bank building. This story was declined because *New York Magazine* had published a story on the same person not long before, and Fenner's pitch added nothing new, unique or different. Fenner previously had been told that pitching stories already run in other publications was unacceptable.

8. The only other story idea that Fenner pitched in that time frame concerned economic hardships facing military personnel on their return from active duty. This topic had been extensively covered by many news outlets, and Fenner offered nothing new or different in his pitch distinguishing his idea from the existing published stories.

  
\_\_\_\_\_  
Daniel Greenfield

Sworn to before me this  
8th day of May 2013

  
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NOTARY PUBLIC

MARY A. O'CONNELL  
Notary Public, State of New York  
No. 01OC6023427  
Qualified in Queens County  
Commission Expires April 19, 20 15